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REMARKS

Claims 1-13 are pending in the application, and with entry of this Response, Claim 1 is amended, Claim 2 is currently withdrawn, and Claims 3-13 are new. The amendments to the claim are supported by the application as originally filed and do not introduce new matter.

REJECTION OF CLAIM 1 UNDER 35 U.S.C. § 112, FIRST PARAGRAPH - ENABLEMENT

Claim 1 was rejected by the Examiner under 35 U.S.C. § 112, first paragraph, for failing to comply with the enablement requirement. The Examiner rejected Claim 1 for lack of enablement because "the specification does not reasonably provide enablement for a composition that produces minimal irritation when contacted with the dermis." Applicants respectfully submit that the rejection is overcome in view of the present amendments and request the Examiner to withdraw this rejection.

REJECTION OF CLAIM 1 UNDER 35 U.S.C. § 112, FIRST PARAGRAPH - WRITTEN DESCRIPTION

Claim 1 was rejected by the Examiner under 35 U.S.C. § 112, first paragraph, for failing to comply with the written description requirement. The Examiner rejected Claim 1 for failure to comply with the written description requirement because "the disclosure of the instant specification is not sufficient to support the generic concept of 'selecting' a clay soil." Applicants respectfully submit that the rejection is overcome in view of the present amendments and request the Examiner to withdraw this rejection.

REJECTION OF CLAIM 1 UNDER 35 U.S.C. § 112, SECOND PARAGRAPH

Claim 1 was rejected by the Examiner under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention. The Examiner rejected Claim 1 as being indefinite because "the phrase 'minimal irritation' is qualified by the adverb 'unexpectedly'. . . [as] it is not possible to determine an 'unexpected' level of dermal irritation." Applicants respectfully submit that the rejection is overcome in view of the present amendments and request the Examiner to withdraw this rejection.

REJECTION OF CLAIM 1 UNDER 35 U.S.C. § 103(a)

Claim 1 was rejected under 35 U.S.C. § 103(a) as being obvious and unpatentable over Sugahara *et al.* (U.S. Patent No. 3,617,215) (herein "Sugahara"). The Examiner stated that Sugahara "teaches a method of preparing a mineral composition comprising: admixing clay soil with water and an acid to form a slurry; allowing particles of the slurry to settle; and concentrating the liquid.... [and] that this method is beneficial because it leads to effective utilization of acid and the extracted product." Applicants respectfully traverse this rejection.

Sugahara teaches a method for producing an active clay of finely divided silica. Sugahara teaches a method wherein the first step requires the combination of an alumina-silica clay with an acid to form a "nonfluid solid reaction product". (See Sugahara, Col. 3, lines 57-58) The addition of the acid to the dry clay is taught by Sugahara to be the step that differentiates the Sugahara method from a method where acid clay is added to a large amount of a dilute acid solution. (See Sugahara, Col. 1, line 51- Col. 2, line 5). Sugahara teaches that sufficient acid must be added to the dry clay to remove "basic metal constituents" (See Sugahara, Col. 3, line 70 to Col. 4, line 6). Basic metal constituents include aluminum, iron, calcium and magnesium. (See Sugahara, Col. 3, lines 46-53). Sugahara neither teaches nor suggests a method for preparing a mineral composition that comprises basic metal constituents such as calcium. For example, the Example 1 of Sugahara (Col. 8), shows that the method of Sugahara, of combining a sufficient amount of acid to remove the basic metal constituents, yields a product wherein CaO is 0.83%. The teaching of Sugahara is a method for removing basic metal constituents by acid extraction of dry clay, which does not provide a teaching or suggestion of Applicants' currently claimed invention. Applicants respectfully request the Examiner to withdraw the rejection.

REJECTION OF CLAIM 1 UNDER NONSTATUTORY DOUBLE PATENTING

Claim 1 was rejected by the Examiner on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claims 1-7 of the co-pending U.S. Patent Application No. 11/472,536 ('536). Applicants respectfully submit that until allowable subject matter is found, a complete determination cannot be made. Applicants submit that once allowable subject matter is found, Applicants may consider the filing of a terminal disclaimer.

In re Application of: BLOTSKY, Roger D. et al.
Serial No.: 10/725,729
Response to Office Action

REJECTION OF CLAIM 1 UNDER NONSTATUTORY DOUBLE PATENTING

Claim 1 was rejected by the Examiner on the ground of non-statutory obviousness-type double patenting as being unpatentable over Claim 1 of the co-pending U.S. Patent Application 11/638,311 ('311). Applicants respectfully submit that until allowable subject matter is found, a complete determination cannot be made. Applicants submit that once allowable subject matter is found, Applicants may consider the filing of a terminal disclaimer.

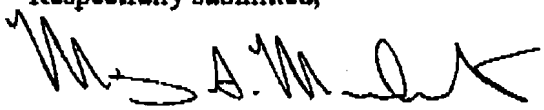
CONCLUSION

The foregoing is a complete response to the Action dated June 14, 2007. Applicants respectfully submit that at least Claim 1 is patentable. Early and favorable consideration is solicited.

The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to Deposit Account No. 20-1507.

If the Examiner believes there are other issues that can be resolved by a telephone interview, or that there are any informalities that remain in the application which may be corrected by the Examiner's amendment, a telephone call to the undersigned attorney at (404) 885-3652 is respectfully solicited.

Respectfully submitted,



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